

STATUS OF PENDING EN BANC CASES

Today's Date: December 20, 2010

This report is provided for case identification and background information only and does not reflect the views of the court. When a case is heard or reheard en banc, the en banc court assumes jurisdiction over the entire case, see 28 U.S.C. § 46(c), regardless of the issue or issues that may have caused any member of the Court to vote to hear the case en banc. Summerlin v. Stewart, 309 F.3d 1193 (9th Cir. 2002)

Cyr v. Reliance Standard Life Ins. Co., 07-56869 / 08-55234

Three-Judge Panel Opinion: None

Order Taking Case En Banc: 2010 WL 4969026 (9th Cir. December 2, 2010)

Date of Order Taking Case En Banc: December 2, 2010

Status: To be calendared the week of March 21, 2011 in San Francisco, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal of district court's summary judgment in favor of former employee in her action seeking an increase in long term disability benefits under an ERISA plan.

Holding: Not yet decided

Comite de Jornaleros v. City of Redondo, 06-55750

Three-Judge Panel Opinion: 607 F.3d 1178 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 1054 (9th Cir. 2010)

Date of Order Taking Case En Banc: October 15, 2010

Status: To be calendared the week of March 21, 2011 in San Francisco, California.

Members of En Banc Court: Not yet available.

Subject Matter: Appeal of district court's summary judgment in day laborers' First Amendment challenge to ordinance prohibiting solicitation of business on streets and highways.

Holding: Not yet decided

Mattos v. Agarano, 08-15567

Three-Judge Panel Opinion: 590 F.3d 1082 (9th Cir. 2010)

Order Taking Case En Banc: 2010 WL 3931122 (9th Cir. October 4, 2010)

Date of Order Taking Case En Banc: October 4, 2010

Status: Appeal numbers 08-15567 and 08-35526 are consolidated for rehearing en banc. Argued and submitted December 14, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Pamela Ann Rymer, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Raymond C. Fisher, Richard A. Paez, Johnnie B. Rawlinson, Richard R. Clifton, Carlos T. Bea

Subject Matter: Appeal of district court's denial of police officers' motion for summary judgment in 42 U.S.C. § 1983 action alleging the use of excessive force.

Holding: Not yet decided

Wilderness Society v. United States Forest Service, 09-35200

Three-Judge Panel Opinion: None

Order Taking Case En Banc: 623 F.3d 911 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 30, 2010

Status: Argued and submitted December 13, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Harry Pregerson, Stephen R. Reinhardt, Pamela Ann Rymer, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Kim McLane Wardlaw, Johnnie B. Rawlinson, Jay S. Bybee

Subject Matter: Appeal of district court's denial of recreational groups' Fed. R. Civ. P. 24 motion to intervene as defendants in environmental groups' action against the United States Forest Service.

Holding: Not yet decided

Brooks v. City of Seattle, 08-35526

Three-Judge Panel Opinion: 599 F.3d 1018 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 911 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 30, 2010

Status: Appeal numbers 08-15567 and 08-35526 are consolidated for rehearing en banc. Argued and submitted December 14, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Pamela Ann Rymer, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Raymond C. Fisher, Richard A. Paez, Johnnie B. Rawlinson, Richard R. Clifton, Carlos T. Bea

Subject Matter: Appeal of district court's denial of police officers' motion for summary judgment in 42 U.S.C. § 1983 action alleging the use of excessive force.

Holding: Not yet decided

Montz v. Pilgrim Films & Television, Inc., 08-56954

Three-Judge Panel Opinion: 606 F.3d 1154 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 912 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 30, 2010

Status: Argued and submitted December 16, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, Sidney R. Thomas, Kim McLane Wardlaw, Ronald M. Gould, Richard A. Paez, Richard C. Tallman, Carlos T. Bea, Milan D. Smith, Jr.

Subject Matter: Appeal of district court's judgment in a copyright infringement action.

Holding: Not yet decided

Nunez-Reyes v. Holder, 05-74350

Three-Judge Panel Opinion: 602 F.3d 1102 (9th Cir. 2010)

Order Taking Case En Banc: 2010 WL 3816719 (9th Cir. September 24, 2010)

Date of Order Taking Case En Banc: September 24, 2010

Status: Argued and submitted December 14, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Betty Binns Fletcher, Harry Pregerson, Diarmuid F. O'Scannlain, Sidney R. Thomas, Susan P. Graber, Kim McLane Wardlaw, Consuelo M. Callahan, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Petition for review by native and citizen of Mexico, from denial of application for cancellation of removal based on state drug convictions subsequently expunged under California law.

Holding: Not yet decided

Singh v. Holder, 08-70434

Three-Judge Panel Opinion: 602 F.3d 982 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 633 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 17, 2010

Status: Argued and submitted December 15, 2010

Members of En Banc Court: Alex Kozinski, Diarmuid F. O'Scannlain, Susan P. Graber, M. Margaret McKeown, Raymond C. Fisher, Ronald M. Gould, Richard A. Paez, Johnnie B. Rawlinson, Richard R. Clifton, Consuelo M. Callahan, Carlos T. Bea

Subject Matter: Petition for review by native and citizen of India, from denial of asylum, withholding of removal and relief under the Convention Against Torture.

Holding: Not yet decided

Khatib v. County of Orange, 08-56423

Three-Judge Panel Opinion: 603 F.3d 713 (9th Cir. 2010)

Order Taking Case En Banc: 622 F.3d 1074 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 7, 2010

Status: Argued and submitted December 13, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Diarmuid F. O'Scannlain, Sidney R. Thomas, M. Margaret McKeown, Raymond C. Fisher, Ronald M. Gould, Johnnie B. Rawlinson, Richard R. Clifton, Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal of district court's dismissal of complaint brought under the Religious Land Use and Institutionalized Persons Act by a Muslim woman required to remove her headscarf while she was held in a courthouse holding cell.

Holding: Not yet decided

Payne v. Peninsula School District, 07-35115

Three-Judge Panel Opinion: 598 F.3d 1123 (9th Cir. 2010)

Order Taking Case En Banc: 621 F.3d 1001 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 7, 2010

Status: Argued and submitted December 15, 2010

Members of En Banc Court: Alex Kozinski, Diarmuid F. O'Scannlain, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Raymond C. Fisher, Johnnie B. Rawlinson, Jay S. Bybee, Consuelo M. Callahan, Carlos T. Bea, Milan D. Smith, Jr.

Subject Matter: Appeal of summary judgment in action regarding the education of an autistic elementary school child.

Holding: Not yet decided

Delgado v. Holder, 03-74442

Three-Judge Panel Opinion: 563 F.3d 863 (9th Cir. 2009)

Order Taking Case En Banc: 621 F.3d 957 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 2, 2010

Status: Argued and submitted December 16, 2010

Members of En Banc Court: Alex Kozinski, William C. Canby, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, M. Margaret McKeown, Raymond C. Fisher, Jay S. Bybee, Consuelo M. Callahan, Carlos T. Bea, Milan D. Smith, Jr., N. Randy Smith

Subject Matter: Petition for review from the Board of Immigration Appeals'

determination that an alien's conviction constituted a particularly serious crime, rendering him ineligible for asylum or withholding of removal.

Holding: Not yet decided

Rosas v. Corporation of the Catholic Archbishop, 09-35003

Three-Judge Panel Opinion: 598 F.3d 668 (9th Cir. 2010)

Order Taking Case En Banc: 617 F.3d 1101 (9th Cir. 2010)

Date of Order Taking Case En Banc: August 5, 2010

En Banc Order: 2010 WL 5029533 (9th Cir. December 10, 2010)

Date of En Banc Order: December 10, 2010

Status: Affirmed the district court's judgment on the pleadings on a claim under the Washington Minimum Wage Act seeking pay for overtime hours plaintiff worked as a seminarian in a Catholic church.

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Robert R. Beezer, Diarmuid F. O'Scannlain, Susan P. Graber, Raymond C. Fisher, Ronald M. Gould, Richard C. Tallman, Carlos T. Bea, Milan D. Smith, Jr., N. Randy Smith

Subject Matter: Appeal by seminarian of district court's dismissal of action under Title VII and Washington wage and hour law against the Catholic Archbishop of Seattle.

Holding: The ministerial exception exempted the church from the application of the employment statute. On the facts as alleged, plaintiff was a minister under any reasonable interpretation of the exception.

Harrison v. Gillespie, 08-16602

Three-Judge Panel Opinion: 596 F.3d 551 (9th Cir. 2010)

Order Taking Case En Banc: 608 F.3d 1117 (9th Cir. 2010)

Date of Order Taking Case En Banc: June 18, 2010

Status: Argued and submitted September 23, 2010

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Sidney R. Thomas, Susan P. Graber, M. Margaret McKeown, Kim McLane Wardlaw, William A. Fletcher, Raymond C. Fisher, Marsha S. Berzon, Richard R. Clifton, Milan D. Smith, Jr.

Subject Matter: Appeal of district court's denial of habeas corpus petition seeking to strike the death penalty, where jury deadlocked at the penalty phase following conviction for murder.

Holding: Not yet decided

Norse v. City of Santa Cruz, 07-15814

Three-Judge Panel Opinion: 586 F.3d 697 (9th Cir. 2010)

Order Taking Case En Banc: 598 F.3d 1061 (9th Cir. 2010)

Date of Order Taking Case En Banc: March 12, 2010

Status: Affirmed in part and reversed in part district court's sua sponte summary judgment, granted on the eve of trial.

En Banc Order: 2010 WL 5097749 (9th Cir. December 15, 2010)

Date of En Banc Order: December 15, 2010

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Pamela Ann Rymer, Sidney R. Thomas, M. Margaret McKeown, William A. Fletcher, Raymond C. Fisher, Ronald M. Gould, Richard C. Tallman, Richard R. Clifton, Carlos T. Bea.

Subject Matter: Appeal in 42 U.S.C. § 1983 action alleging violation of First Amendment rights.

Holding: In action alleging that City of Santa Cruz officials violated plaintiff's First Amendment rights by ejecting him from a city council meeting after he gave a silent Nazi salute, the en banc court held that the district court erred in granting summary judgment sua sponte without providing him adequate notice and an opportunity to be heard pursuant to Fed. R. C. P. 56, and without ruling on his evidentiary objections. Triable issues of fact existed as to whether he was impermissibly ejected from the meeting because of his viewpoint rather than his alleged disruptiveness. The question of the City's Monell liability was a question of fact appropriately decided on a more fully-developed record.

Guggenheim v. City of Goleta, 06-56306

Three-Judge Panel Opinion: 582 F.3d 996 (9th Cir. 2009)

Order Taking Case En Banc: 598 F.3d 1061(9th Cir. 2010)

Date of Order Taking Case En Banc: March 12, 2010

Status: Argued and submitted June 22, 2010.

Members of En Banc Court: Alex Kozinski, Alfred T. Goodwin, Stephen R. Reinhardt, Pamela Ann Rymer, Andrew J. Kleinfeld, Ronald M. Gould, Richard R. Clifton, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal by mobile home park owners challenging City's mobile home rent control ordinance.

Holding: Not yet decided

United States v. Lopez-Velasquez, 07-30241

Three-Judge Panel Opinion: 568 F.3d 1139 (9th Cir. 2009)

Order Taking Case En Banc: 599 F.3d 925 (9th Cir. 2010)

Date of Order Taking Case En Banc: March 8, 2010

En Banc Order: 2010 WL 4948516 (9th Cir. December 7, 2010)

Date of En Banc Order: December 7, 2010

Status: Reversed the district court's dismissal of an illegal reentry indictment.

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Diarmuid F. O'Scannlain, Sidney R. Thomas, Susan P. Graber, M. Margaret McKeown, Kim McLane Wardlaw, Raymond C. Fisher, Ronald M. Gould, Richard A. Paez, Consuelo M. Callahan

Subject Matter: Appeal by United States of district court's dismissal of criminal indictment for illegal reentry following removal.

Holding: An Immigration Judge's duty in a deportation proceeding is limited to informing an alien of a reasonable possibility that the alien is eligible for relief at the time of the hearing.

United States v. Aguila Montes De Oca, 05-50170

Three-Judge Panel Opinion: 553 F.3d 1229 (9th Cir. 2009)

Order Taking Case En Banc: 594 F.3d 1080 (9th Cir. February 3, 2010)

Date of Order Taking Case En Banc: February 3, 2010

Status: Argued and submitted March 25, 2010

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Barry G. Silverman, William A. Fletcher, Ronald M. Gould, Marsha S. Berzon, Johnnie B. Rawlinson, Jay S. Bybee, Consuelo M. Callahan, Milan D. Smith, Jr., N. Randy Smith

Subject Matter: Appeal of criminal conviction for attempting to reenter the United States following deportation.

Holding: Not yet decided

Chapman v. Pier 1 Imports, 07-16326

Three-Judge Panel Opinion: 571 F.3d 853 (9th Cir. 2009)

Order Taking Case En Banc: 593 F.3d 974 (9th Cir. 2010)

Date of Order Taking Case En Banc: January 26, 2010

Status: Argued and submitted March 23, 2010

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Andrew J. Kleinfeld, Barry G. Silverman, Kim McLane Wardlaw, Richard A. Paez, Marsha S. Berzon, Johnnie B. Rawlinson, Richard R. Clifton, Milan D. Smith, Jr. and N. Randy Smith

Subject Matter: Appeal of summary judgment in action brought against a retail store pursuant to the Americans with Disabilities Act.

Holding: Not yet decided

United States v. Begay, 07-10487

Three-Judge Panel Opinion: 567 F.3d 540 (9th Cir. 2009)

Order Taking Case En Banc: 591 F.3d 1180 (9th Cir. 2010)

Date of Order Taking Case En Banc: January 4, 2010

Status: Argued and submitted March 23, 2010.

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Sidney R. Thomas, Barry G. Silverman, M. Margaret McKeown, Kim McLane Wardlaw, Raymond C. Fisher, Marsha S. Berzon, Richard R. Clifton, Consuelo M. Callahan, Sandra S. Ikuta

Subject Matter: Appeal of criminal conviction for first-degree murder and using a firearm during a crime of violence.

Holding: Not yet decided

Cassirer v. Thyssen-Bornemisza, 06-56325

Three-Judge Panel Opinion: 580 F.3d 1048 (9th Cir. 2009)

Order Taking Case En Banc: 590 F.3d 981 (9th Cir. 2009)

Date of Order Taking Case En Banc: December 30, 2009

Status: Dismissal in part; affirmance of district court's interlocutory order denying motions to dismiss for lack of subject matter jurisdiction. Clerk directed to withhold issuance of mandate until further order.

En Banc Order: 616 F.3d 1019 (9th Cir. 2010)

Date of En Banc Order: August 12, 2010

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Andrew J. Kleinfeld, Sidney R. Thomas, Barry G. Silverman, William A. Fletcher, Ronald M. Gould, Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea, N. Randy Smith

Subject Matter: Appeal of district court's denial of motions to dismiss action seeking to recover from a Spanish museum a painting allegedly taken in 1939 in violation of international law by an agent of the government of Nazi Germany.

Holding: The court lacks appellate jurisdiction over district court's decision declining to dismiss the action for lack of personal jurisdiction and a case or controversy. Lawsuit falls within the "expropriation" exception to sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3). Spain and the Thyssen-Bornemisza Collection Foundation are not immune simply because neither was the taker. Section 1605(a)(3) does not mandate exhaustion of remedies (in Germany or Spain) before a court may determine whether subject matter jurisdiction exists.

Catholic League v. San Francisco, 06-17328

Three-Judge Panel Opinion: 567 F.3d 595 (9th Cir. 2009)

Order Taking Case En Banc: 586 F.3d 1166 (9th Cir. 2009)

Date of Order Taking Case En Banc: November 5, 2009

En Banc Order: 624 F.3d 1043 (9th Cir. October 22, 2010)

Date of En Banc Order: October 22, 2010

Status: Affirmed district court's dismissal of 42 U.S.C. § 1983 action. Mandate issued November 16, 2010.

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Andrew J. Kleinfeld, Michael Daly Hawkins, Sidney R. Thomas, Barry G. Silverman, Susan P. Graber, M. Margaret McKeown, Richard R. Clifton, Jay S. Bybee, Sandra S. Ikuta

Subject Matter: Appeal of district court's dismissal of 42 U.S.C. § 1983 Establishment Clause action against City for resolution opposing Vatican directive that Catholic archdiocese stop placing children for adoption in homosexual households.

Holding: Plaintiffs had standing to litigate whether the resolution concerning the adoption of children by same-sex couples violated the Establishment Clause. A majority of the en banc court concluded that dismissal should be affirmed, either on standing grounds or on the merits.

Ojo v. Farmers Group, Inc., 06-55522

Three-Judge Panel Opinion: 565 F.3d 1175 (9th Cir. 2009)

Order Taking Case En Banc: 586 F.3d 1108 (9th Cir. 2009)

Date of Order Taking Case En Banc: October 26, 2009

En Banc Order: 600 F.3d 1205 (9th Cir. April 9, 2010)

Date of En Banc Order: April 9, 2010

Status: Certified to the Supreme Court of Texas the question whether Texas law permits an insurance company to price insurance by using credit-score factors that have a racially disparate impact that, were it not for the McCarran-Ferguson Act, would violate the FHA. Stayed further proceedings pending resolution of the certified question.

Members of En Banc Court: Alex Kozinski, Pamela Ann Rymer, Michael Daly Hawkins, Susan P. Graber, M. Margaret McKeown, William A. Fletcher, Ronald M. Gould, Richard R. Clifton, Milan D. Smith, Jr., Sandra S. Ikuta, N. Randy Smith

Subject Matter: Appeal of district court's dismissal of class action claiming disparate impact race discrimination by insurer in violation of federal Fair Housing Act in homeowners' property and casualty policies.

Holding: The FHA prohibits discrimination in the denial and pricing of homeowner's insurance. The reverse-preemption standard set forth in the McCarran-Ferguson Act

applies to claims brought under latter-enacted civil rights statutes such as the FHA.

Byrd v. Maricopa County Sheriff's Dept., 07-16640

Three-Judge Panel Opinion: 565 F.3d 1205 (9th Cir. 2009)

Order Taking Case En Banc: 583 F.3d 673 (9th Cir. October 6, 2009)

Date of Order Taking Case En Banc: October 6, 2009

Status: Argued and submitted December 15, 2009

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Susan P. Graber, Sidney R. Thomas, Raymond C. Fisher, Ronald M. Gould, Richard A. Paez, Richard C. Tallman, Johnnie B. Rawlinson, Carlos T. Bea, N. Randy Smith

Subject Matter: Appeal of district court's judgment in action by male pretrial detainee alleging unconstitutional search by female cadet.

Holding: Not yet decided

Doody v. Schriro, 06-17161

Three-Judge Panel Opinion: 548 F.3d 847 (9th Cir. 2008)

Order Taking Case En Banc: 566 F.3d 839 (9th Cir. 2009)

Date of Order Taking Case En Banc: May 12, 2009

En Banc Order: 596 F.3d 620 (9th Cir. 2010)

Date of En Banc Order: February 25, 2010

Status: Reversed district court's denial of habeas corpus petition challenging a conviction based on nine murders. On 10/12/10 the Supreme Court granted the petition for a writ of certiorari, vacated the judgment, and remanded for further consideration in light of *Florida v. Powell*.

Members of En Banc Court: Alex Kozinski, Mary M. Schroeder, Betty Fletcher, Harry Pregerson, Stephen R. Reinhardt, Pamela Ann Rymer, Andrew J. Kleinfeld, Sidney R. Thomas, Kim M. Wardlaw, Richard C. Tallman, Johnnie B. Rawlinson

Subject Matter: Appeal of the district court's denial of petitioner's 28 U.S.C. § 2254 habeas corpus petition challenging his convictions for murder, armed robbery, burglary, and conspiracy.

Holding: The Arizona Court of Appeals unreasonably concluded that *Miranda* advisements made to defendant were clear and understandable. The state court made an unreasonable determination that defendant voluntarily confessed, and unreasonably applied clearly established federal law in failing to consider the totality of the circumstances to determine whether defendant's will was overborne by the interrogation. The coerced confession was inadmissible and the error was not harmless.

Pinholster v. Ayers, 03-99003 / 03-99008

Three-Judge Panel Opinion: 525 F.3d 742 (9th Cir. 2008)

Order Taking Case En Banc: 560 F.3d 964 (9th Cir. 2009)

Date of Order Taking Case En Banc: March 20, 2009

En Banc Order: 590 F.3d 651 (9th Cir. 2009)

Date of En Banc Order: December 9, 2009

Status: Affirmed the district court's partial grant of 28 U.S.C. § 2254 habeas corpus petition challenging murder conviction and capital sentence.

Members of En Banc Court: Alex Kozinski, Harry Pregerson, Stephen R. Reinhardt, Pamela Ann Rymer, Andrew J. Kleinfeld, Kim M. Wardlaw, William A. Fletcher, Richard A. Paez, Marsha S. Berzon, Jay S. Bybee, Milan D. Smith, Jr

Subject Matter: Appeal following district court's partial grant and partial denial of habeas corpus petition. District court granted relief as to death sentence for conviction on capital murder charge, but otherwise denied petition.

Holding: The en banc court affirmed the district court's denial of petitioner's request for an evidentiary hearing and denial of habeas relief as to his claim of ineffective assistance of counsel at the guilt phase, based on lack of prejudice. The en banc court affirmed the district court's conclusion that the California Supreme Court was objectively unreasonable in summarily denying petitioner's claim of ineffective assistance at sentencing, based on counsel's prejudicial failure to investigate, discover and introduce readily available mitigation evidence.

Richter v. Hickman, 06-15614

Three-Judge Panel Opinion: 521 F.3d 1222 (9th Cir. 2008)

Order Taking Case En Banc: 548 F.3d 1236 (9th Cir. 2008)

Date of Order Taking Case En Banc: November 10, 2008

En Banc Order: 578 F.3d 944 (9th Cir. 2009)

Date of En Banc Order: August 10, 2009

Status: Reversed district court's denial of habeas corpus petition.

Members of En Banc Court: Alex Kozinski, Stephen R. Reinhardt, Diarmuid F. O'Scannlain, Andrew J. Kleinfeld, Barry G. Silverman, Kim M. Wardlaw, Raymond C. Fisher, Richard A. Paez, Jay S. Bybee, Milan D. Smith, Jr., Sandra S. Ikuta

Subject Matter: Appeal of the district court's denial of petitioners' 28 U.S.C. § 2254 habeas corpus petitions challenging jury convictions for murder, attempted murder, robbery and burglary.

Holding: Trial counsel rendered ineffective assistance by failing to investigate and present expert testimony on evidence that would have supported appellant's self-defense claim.

Sarei v. Rio Tinto, PLC, 02-56256 / 02-56390

Three-Judge Panel Opinion: 487 F.3d 1193 (9th Cir. 2007)

Order Taking Case En Banc: 499 F.3d 923 (9th Cir. 2007)

Date of Order Taking Case En Banc: August 20, 2007

En Banc Order: 550 F.3d 822 (9th Cir. 2008)

Date of En Banc Order: December 16, 2008

Status: Remand for consideration, in the first instance, of whether exhaustion of local remedies was required, in dismissal of Alien Tort Statute ("ATS") action. On 9/29/09 the en banc court granted defendants' motion to reactivate the appeals and ordered supplemental briefing. Argued and submitted September 21, 2010. On 10/26/10 the en banc court referred the case to Judge Edward Leavy to explore the possibility of mediation.

Members of En Banc Court: Mary M. Schroeder, Harry Pregerson, Stephen R. Reinhardt, Andrew J. Kleinfeld, Barry G. Silverman, M.M. McKeown, Marsha S. Berzon, Johnnie B. Rawlinson, Consuelo M. Callahan, Carlos T. Bea, Sandra S. Ikuta

Subject Matter: Appeal of the district court's dismissal of a class action complaint brought by current and former residents of the island of Bougainville in Papua New Guinea against a mining company under the Alien Tort Claims Act.

Holding: Certain ATS claims are appropriately considered for exhaustion under both domestic prudential standards and core principles of international law. Defendant bears the burden to plead and justify an exhaustion requirement, including the availability of local remedies.